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UNITED STATES COURT
DISTRICT OF IDAHO

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8 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO
9

10 UNITED STATES OF AMERICA,)

11 Plaintiff,)

12 vs.)

13 CARLOS CASTILLO-CORTES (#03),)

14 Defendant.)
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Case No. CR 04-092-(03)-S-EJL

RULE 11 PLEA AGREEMENT

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1 **I. GUILTY PLEA**

2 **A. Summary of Terms.** Pursuant to Rule 11(c)(1)(A) and (B) of the Federal Rules of
3 Criminal Procedure, the defendant, the attorney for the defendant, and the Government¹ agree that
4 the defendant will plead guilty to Counts Four and Five of the Indictment. The defendant
5 acknowledges that the plea is voluntary and did not result from force, threats, or promises, other
6 than any promise made in this Plea Agreement. More specifically, the parties agree as follows:

7 Count Four charges the defendant with Possession of False Immigration Documents, in
8 violation of Title 18, United States Code, Section 1546(a).

9 Count Five charges the defendant with Sale of Fraudulent Social Security Cards, in
10 violation of Title 42, United States Code, Section 408(a)(7)(C).

11 **B. Acceptance.** Upon acceptance of the defendant's guilty plea(s), and the
12 defendant's full compliance with the other terms of this Agreement, the Government, under Rule
13 11(c)(1)(B) of the Federal Rules of Criminal Procedure, agrees to recommend a sentence within
14 the guidelines range and that it will not charge the defendant with a violation of Title 18, U.S.C. §
15 922(g)(5) as a result of his possession of a firearm on or about June 22, 2004. The Government
16 also agrees that it will dismiss, under Rule 11(c)(1)(A), Count One of the Indictment. Defendant
17 acknowledges, agrees and waives objection to the fact that the Court may consider "relevant
18 conduct" including relevant conduct alleged in these dismissed counts in arriving at an appropriate
19 sentence pursuant to Section 1B1.3 of the Sentencing Guidelines.

20 **II. WAIVER OF CONSTITUTIONAL RIGHTS**

21 Defendant understands that he will be placed under oath at the plea hearing and that the
22 government, in a prosecution for perjury or false statement, has the right to use against the
23 defendant any statement that the defendant gives under oath. Moreover, the defendant understands
24 and waives (gives up) the following rights: 1) the right to plead not guilty to the offense(s) charged
25 against the defendant and to persist in that plea; 2) the right to a trial by jury; and 3) the rights, at
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27 ¹ The word "Government" in this Agreement refers to the United States Attorney for the
28 District of Idaho.

1 trial, to confront and cross-examine adverse witnesses, to be protected from compelled self-
2 incrimination, to testify, to present evidence and to compel the attendance of witnesses. The
3 defendant understands that by pleading guilty he waives (gives up) all of the rights set forth above.
4 The defendant fully understands that by entering a plea of guilty, if that plea is accepted by the
5 District Court, there will be no trial and defendant will have waived (given up) these trial rights.

6 **III. NATURE OF THE CHARGES**

7 **A. Elements of the Crime.** The elements of the crime of Possession of False
8 Immigration Documents, as charged in Count Four, are as follows:

- 9 1. The defendant knowingly possessed an INS alien registration receipt card;
- 10 2. The document was counterfeit; and
- 11 3. The defendant knew at the time he possessed it that the document had been
12 counterfeit.

13 **B. Elements of the Crime.** The elements of the crime of Sale of Fraudulent Social
14 Security Cards, as charged in Count Five, are as follows:

- 15 1. The defendant knowingly sold a Social Security Card;
- 16 2. The Social Security Card was counterfeit; and
- 17 3. The defendant knew at the time he sold it that the Social Security Card was
18 counterfeit.

19 **C. Factual Basis.** If this matter were to proceed to trial, the Government and the
20 defendant agree that the following facts would be proven beyond a reasonable doubt, which facts
21 accurately represent the defendant's readily provable offense conduct. This factual summary is
22 not intended to detail all relevant conduct, or cover all specific offense characteristics, which will
23 be determined by the Court after its consideration of the Presentence Report.

24 On or about May 22, 2003, the defendant, Francisco J. Castillo-Machuca, spoke with a
25 cooperating individual ("CI") regarding the purchase of counterfeit identification documents.
26 Castillo-Machuca told the individual that the counterfeit identification documents would be ready
27 on May 23, 2003, and cost \$100.
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1 On or about May 23, 2003, the CI drove to the residence of Francisco J. Castillo-Machuca
2 and Maricela Cortes-Castillo, man and wife, 403 Poverty Flats Road, Jerome, Idaho, where
3 Cortes-Castillo delivered one counterfeit social security card, as described in Count Three of the
4 Indictment, to the individual. Cortes-Castillo instructed the individual to return to the residence
5 after her husband (Castillo-Machuca) was scheduled to finish working to retrieve the previously-
6 ordered fraudulent alien registration card. Later that afternoon, the individual returned to the
7 residence and spoke with Cortes-Castillo, who delivered one counterfeit alien registration receipt
8 card, as described in Count Two of the Indictment, to the individual. The individual paid Cortes-
9 Castillo the agreed upon price of \$100 for the counterfeit cards.

10 On or about September 27 and 30, 2003, a CI spoke with Cortes-Castillo regarding the
11 purchase of fraudulent identification documents and agreed to purchase the documents on
12 September 30, 2003.

13 On or about September 30, 2003, the same individual met with Carlos G. Castillo-Cortes in
14 Jerome, Idaho, and purchased for \$100 two counterfeit identification documents as described in
15 Counts Four and Five of the Indictment.

16 On March 2, 2004, a CI made contact with Francisco J. Castillo-Machuca and ordered six
17 sets of counterfeit identification documents, which were to be delivered on March 2, 2004.

18 On March 2, 2004, the individual went to the Poverty Flats residence and met with
19 Castillo-Machuca and Cortes-Castillo. The three then drove to a residence in Jerome, Idaho,
20 where Castillo-Machuca asked to be dropped off and instructed the individual to return in an hour
21 for the previously ordered identification documents. When the individual returned, Castillo-
22 Machuca and Cortes-Castillo entered the vehicle and were driven to their residence. While
23 driving, Castillo-Machuca gave the individual the six sets of documents, as described in Counts
24 Six and Seven of the Indictment. The individual paid Castillo-Machuca \$600 for the documents.

25 All documents purchased by the CI were examined by a qualified forensic document
26 examiner and determined to be counterfeit.

1 **IV. SENTENCING FACTORS**

2 **A. Maximum Penalties.** A violation of Title 18, United States Code, Section 1546(a),
3 Possession of False Immigration Documents, as charged in Count Four, is punishable by a term of
4 imprisonment of ten (1) years, a term of supervised release of not more than three (3) years, a
5 maximum fine of \$250,000, and a special assessment of \$100.

6 A violation of Title 42 U.S.C. § 408(a)(7)(C), Sale of Fraudulent Social Security Cards, as
7 charged in Count Five, is punishable by a term of imprisonment of five (5) years, a term of
8 supervised release of not more than three (3) years, a maximum fine of \$250,000, and a special
9 assessment of \$100.

10 **B. Supervised Release.** If defendant is sentenced to one year in prison, or less, the
11 Court may also order that, following release from prison, defendant be placed on supervised
12 release for not more than three years. If defendant is sentenced to imprisonment for more than one
13 year, such a term of supervised release will be imposed. The defendant will be sentenced to a term
14 of supervised release to be served after incarceration.

15 The defendant's term of supervised release will be a specific (i.e., a determinate) term
16 chosen by the Court at sentencing. The combination of prison time and supervised release is
17 permitted, by law, to exceed the maximum term of incarceration allowed under the statute(s) that
18 defendant is pleading guilty to violating. Violation of any condition of supervised release may
19 result in defendant being imprisoned for the entire term of supervised release or being prosecuted
20 for contempt of court under Title 18, United States Code, Section 401(3).

21 **C. Fines and Costs.** Unless the Court determines that the defendant will not
22 reasonably be able to pay a fine, or that paying a fine will unduly burden any of the defendant's
23 dependents, a fine shall be imposed. There is no agreement as to the amount of the fine. The
24 Court may also order the defendant to pay the costs of imprisonment, probation, and supervised
25 release.

26 **D. Special Assessment.** Defendant will pay a special assessment of \$100.00 per
27 count, in addition to any fine imposed. This assessment will be paid by defendant before sentence
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1 clearly accepts responsibility for the offense. The Government will move for an additional one-
2 level reduction in the combined offense level under Section 3E1.1(b) if the following conditions
3 are met: The defendant qualifies for a decrease under Section 3E1.1(a); the offense is level 16 or
4 greater; and the defendant has assisted authorities in the investigation or prosecution of
5 defendant's own misconduct by timely notifying authorities of defendant's intention to enter a plea
6 of guilty, thereby permitting the government to avoid preparing for trial and permitting the court to
7 allocate its resources efficiently. If, at any time prior to imposition of sentence, the defendant fails
8 to meet the criteria set out in Section 3E1.1 of the Sentencing Guidelines, or acts in a manner
9 inconsistent with acceptance of responsibility, the Government will not make such a
10 recommendation and/or motion or, if one has already been made, it will withdraw the
11 recommendation and/or motion.

12 **2. Downward Departure Request by Defendant.** The defendant will not
13 seek a downward departure without first notifying the Government of defendant's intent to seek a
14 downward departure and defendant's reasons and basis therefor, 21 days before the date set for
15 sentencing.

16 **VI. WAIVER OF APPEAL AND 28 U.S.C. § 2255 RIGHTS**

17 The defendant is aware that Title 18, United States Code, Section 3742, affords defendant
18 the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the
19 other terms of this Agreement, the defendant knowingly and voluntarily gives up (waives) all
20 appeal rights defendant may have regarding both defendant's conviction and sentence, including
21 any restitution or forfeiture order, or to appeal the manner in which the sentence was imposed,
22 unless the sentence exceeds the maximum permitted by statute, or is the result of an incorrect
23 application of the Sentencing Guidelines to which the defendant filed a proper and timely
24 objection.

25 The defendant is also aware that under certain circumstances a defendant has the right to
26 collaterally challenge defendant's sentence through a habeas petition such as a motion pursuant to
27 Title 28, United States Code, Section 2255. Acknowledging this, in exchange for the other terms
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1 of this Agreement, the defendant knowingly and voluntarily gives up (waives) defendant's right to
2 contest defendant's pleas, conviction, or sentence in any post-conviction proceeding, including any
3 proceeding authorized by Title 28, United States Code, Section 2255, except as to an appeal
4 claiming ineffective assistance of counsel based upon facts discovered after the entry of
5 defendant's guilty pleas.

6 The defendant further understands that nothing in this Plea Agreement shall affect the
7 Government's right and/or duty to appeal as set forth in Title 18, United States Code,
8 Section 3742(b).

9 **VII. PROVIDING INFORMATION FOR THE PRESENTENCE REPORT**

10 The defendant agrees to provide all material financial and other information as may be
11 requested by a representative of the United States Probation Office for use in preparing a
12 Presentence Report. Failure to execute releases and/or provide such material information as may
13 be required is a violation of the terms of this Agreement, and will relieve the Government of its
14 obligations as set forth in this Agreement, and may subject the defendant to an enhancement under
15 Guidelines Section 3C1.1, or provide grounds for an upward departure under Section 5K2.0 of the
16 Sentencing Guidelines, but at the option of the Government, may not constitute grounds for
17 withdrawing the plea of guilty.

18 **VIII. NO RIGHT TO WITHDRAW PLEA**

19 The defendant understands that the Court is not bound to follow any recommendations or
20 requests made by the parties at the time of sentencing. If the Court decides not to follow any of
21 the parties recommendations or requests, the defendant cannot withdraw from this Plea Agreement
22 or the guilty plea.

23 **IX. CONSEQUENCES OF VIOLATING AGREEMENT**

24 **A. Government's Options.** If defendant fails to keep any promise in this Agreement,
25 including any promise to cooperate, or commits a new crime, the Government is relieved of any
26 obligation not to prosecute defendant on other charges, including any charges dismissed as part of
27 this Plea Agreement. Such charges may be brought without prior notice. In addition, if the
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1 Government determines after sentence is imposed under this Agreement that defendant's breach of
2 the Agreement warrants further prosecution, the Government will have the choice between letting
3 the conviction(s) under this Plea Agreement stand or vacating such conviction(s) so that such
4 charge(s) may be re-prosecuted. If the Government makes its determination before sentencing, it
5 may withdraw from the Plea Agreement in its entirety.

6 **B. Defendant's Waiver of Rights.** Defendant agrees that if defendant fails to keep
7 any promise made in this Agreement, defendant gives up: (1) the right not to be placed twice in
8 jeopardy for the offense(s) to which defendant entered a plea of guilty or which were dismissed
9 under this Agreement; (2) any right under the Constitution and laws of the United States to be
10 charged or tried in a more speedy manner for any charge that is brought as a result of defendant's
11 failure to keep this Agreement; and (3) the right to be charged within the applicable statute of
12 limitations period for any charge that is brought as a result of defendant's failure to keep this
13 Agreement, and on which the statute of limitations expired after defendant entered into this
14 Agreement.

15 Furthermore, the defendant further understands and agrees that if defendant does not enter
16 a valid and acceptable plea, the Government will move to continue the trial now set. The
17 defendant agrees not to contest such a continuance, and agrees that the resulting delay would be
18 excludable time under Title 18, United States Code, Sections 3161(h)(1)(I), (h)(3)(A), or
19 (h)(8)(A). This continuance will be necessary to allow the Government adequate time to prepare
20 for trial.

21 **XI. MISCELLANEOUS**

22 **A. No Other Terms.** This Agreement incorporates the complete understanding
23 between the parties, and no other promises have been made by the Government to the defendant or
24 to the attorney for the defendant. This Agreement does not prevent any governmental agency from
25 pursuing civil or administrative actions against defendant or any property. Unless an exception to
26 this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or
27 obligate governmental entities other than the United States Attorney's Office for the District of
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1 Idaho. If requested to do so by the defendant or defendant's counsel, the Government will bring
2 the defendant's cooperation and pleas to the attention of other prosecuting authorities.

3 **B. Plea Agreement Acceptance Deadline.** This plea offer is explicitly conditioned
4 on acceptance of this plea Agreement no later than **5:00 p.m. on July 16, 2004**. It is defendant's
5 sole and complete responsibility to notify the U.S. Attorney's Office of the acceptance of this
6 Agreement by the date specified above in order for this offer to be effectively accepted.

7 **XII. UNITED STATES' APPROVAL**

8 I have reviewed this matter and the Plea Agreement. I agree on behalf of the United States
9 that the terms and conditions set forth above are appropriate and are in the best interests of justice.

10 THOMAS E. MOSS
11 UNITED STATES ATTORNEY

12 By: 

13 **RAFAEL M. GONZALEZ, JR.**
14 Assistant United States Attorney

7/8/04
DATE


15 **XIII. ACCEPTANCE BY DEFENDANT AND COUNSEL**

16 I have read or have had read to me by an interpreter and carefully reviewed every part of
17 this Plea Agreement with my attorney. I understand the Agreement and its effect upon the
18 potential sentence. Furthermore, I have discussed all of my rights with my attorney and I
19 understand those rights. No other promises or inducements have been made to me, directly or
20 indirectly, by any agent of the Government, including any Assistant United States Attorney,
21 concerning any plea to be entered in this case. In addition, no person has, directly or indirectly,
22 threatened or coerced me to do, or refrain from doing, anything in connection with any aspect of
23 this case, including entering a plea of guilty. I am satisfied with my attorney's advice and
24 representation in this case.

25 
26 **CARLOS CASTILLO-CORTES**
27 Defendant

DATE July 27, 2004

1 I have read this Plea Agreement and have discussed the contents of the Agreement with my
2 client. The Plea Agreement accurately and completely sets forth the entirety of the agreement. I
3 concur in my client's decision to plead guilty as set forth above.

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5 **M. KARI SHURTSLIFF**
6 Attorney for Defendant

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8 DATE

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